

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7 (Previous 11)
Case No. 19-11711 (SCC)

The D&M Capital Group, LLC,

Debtor.

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**DECLARATION OF TIMOTHY SAVITSKY, ESQ. IN OPPOSITION
TO THE TRUSTEE'S MOTION TO SELL PROPERTY FREE AND CLEAR OF LIENS
AND ENCUMBERANCES**

Pursuant to 28 U.S.C. § 1746, Timothy Savitsky, Esq., an attorney in good standing and licensed to practice before this Court hereby declares under the penalties of perjury as follows:

1. I am an attorney at Sam P. Israel P.C., counsel for Essex Global Trading, LLC ("Essex"), a creditor of Debtor D&M Capital Group, LLC's ("D&M" or "Debtor") bankruptcy estate.

2. I submit this Declaration upon my personal knowledge and experience, including that knowledge obtained through my legal work on behalf of Essex, and the statements herein are true to the best of my knowledge.

3. This Declaration accompanies and supports Essex's Objection to the Motion of the Trustee to Sell Property Free and Clear of Liens and Encumbrances (the "Motion").

4. In D&M's Answer to the Counterclaims filed by Essex in Adv. Pro. No. 19-01300 (hereinafter, the "Essex Proceeding"), D&M alleged its past practices as a jewelry and gem dealer. Attached hereto as **Exhibit 1** is a true and correct copy of D&M's Answer to the Counterclaims.

5. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from ECF Dkt. No. 11, containing D&M's amended schedule of unsecured creditors.

6. D&M created memos which identified certain of its inventory as being

“100% owned by D and M” when, in truth, that inventory was only partially owned by D&M. Attached hereto as **Exhibit 3** is a true and correct copy of Memo #4743, an exhibit used at the October 8, 2019 deposition of Moty Spector.

7. Attached hereto as **Exhibit 4** is a true and correct copy of the October 8, 2019 deposition testimony of Moty Spector in which he testified that D&M’s claims of 100% ownership on its memos were false.

8. D&M’s original Verified Complaint in the Essex Proceeding sets forth the Debtor’s consignment practices with third parties and confirms the value of D&M’s inventory included on associated memos. Attached hereto as **Exhibit 5** is a true and correct copy of D&M’s Verified Complaint filed in the Essex Proceeding.

9. Essex described an oral agreement that it made with D&M concerning certain precious gems in its Verified Counterclaims against D&M filed in the Essex Proceeding. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts from the Verified Counterclaims filed in the Essex Proceeding.

10. Attached hereto as **Exhibit 7** are true and correct copies of checks issued by D&M which Essex agreed not to cash.

11. In its Verified Amended Complaint, D&M states that Essex was in possession of six stones that had been transferred from D&M on memo. Attached hereto as **Exhibit 8** is a true and correct copy of the Verified Amended Complaint filed in the Essex Proceeding.

12. Essex served document demands on D&M seven months ago on April 1, 2020. Not a single document or written response has been produced by D&M. Attached hereto as **Exhibit 9** is a true and correct copy of the document demands served on D&M by Essex.

13. Counsel for Essex learned in a phone conversation with counsel for the Trustee on October 26, 2020 that the Trustee was in possession of computer records that had yet to be searched and produced.

14. At trial, Moty Spector, D&M's principal, testified to the value of D&M's inventory. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from Moty Spector's trial testimony given on December 9, 2019.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed On: October 28, 2020

By: /s/Timothy Savitsky
Timothy Savitsky (TS6683)
Attorney for Essex Global Trading, LLC